

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CHRISTOPHER LEE SCHWENK, <i>et al.</i> ,	:	Civil No. 1:21-CV-02079
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	:	
Plaintiffs,	:	
	:	
v.	:	Judge Jennifer P. Wilson
	:	
	:	
JOSEPH GARCIA, <i>et al.</i> ,	:	
	:	
Defendants.	:	Magistrate Judge Martin C. Carlson

**ORDER**

Before the court is the report and recommendation of United States Magistrate Judge Martin C. Carlson recommending that Plaintiffs' motion to certify class, Doc. 21, be denied. (Doc. 53.)

Plaintiffs timely filed an objection to the report and recommendation, along with a brief in support of the objections. (Docs. 56, 57.) However, Plaintiffs' objections<sup>1</sup> merely restate and reargue the very issues that Judge Carlson already

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<sup>1</sup> To the extent that Plaintiffs' filings object to the report and recommendation on the basis that ruling on the motion to certify class is premature, the court finds that this is not a proper objection to the report and recommendation. Further, any such request has been waived by Plaintiffs. Plaintiffs, without requesting an extension of the deadline, filed their motion to certify class on March 11, 2022, in accordance with LR 23.3. Plaintiffs did not mention in the briefing on the motion to certify that they believed discovery was necessary before the motion should be decided. Plaintiffs correctly note that discovery had not yet commenced at that time, and did not commence until approximately three months after the motion was filed. (*See* Doc. 63, p. 3.) However, a case management order was issued on July 6, 2022, setting a fact discovery deadline of December 30, 2022. (Doc. 43.) No requests were made to extend the fact discovery deadline. Several months later, on October 3, 2022, Plaintiffs filed an unopposed motion to stay discovery in light of the pending motions. (Doc. 46.) Again, Plaintiffs made no mention of necessary discovery for the resolution of the pending motion to certify class. The court granted the unopposed motion on October 4, 2022, staying discovery pending the resolution of the motions.

considered and rejected in the report and recommendation. (*Id.*) Since mere disagreement with the report and recommendation is not a basis to decline to adopt the report and recommendation, the court construes Brown’s objections as general objections.

When a party raises only general objections to a report and recommendation, a district court is not required to conduct a de novo review of the report and recommendation. *Goney v. Clark*, 749 F.2d 5, 6–7 (3d Cir. 1984). “To obtain de novo determination of a magistrate’s findings by a district court, 28 U.S.C. § 636(b)(1) requires both timely and specific objections to the report.” *Id.* at 6. Thus, when reviewing general objections to a report and recommendation, the court’s review is limited “to ascertaining whether there is ‘clear error’ or ‘manifest injustice’” on the face of the record. *Boomer v. Lewis*, No. 3:06-CV-00850, 2009 WL 2900778, at \*1 (M.D. Pa. Sept. 9, 2009).

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(Doc. 47.) This case was referred to Magistrate Judge Carlson for pretrial management up to and including a report and recommendation on the motion to certify class and motion to dismiss on November 9, 2022. (Doc. 48.) Judge Carlson issued a separate report and recommendation for each pending motion. (*See* Docs. 52, 53.) The court previously issued an order adopting the first report and recommendation, to which no objections were filed. (Doc. 59.) It is now, through objections to Judge Carlson’s report and recommendation, which recommends denial of Plaintiffs’ motion, that Plaintiffs raise, for the first time, the notion that further discovery is necessary before a determination on certification of the class is appropriate. Plaintiffs have had multiple opportunities throughout this litigation to raise this issue and have failed to do so. Accordingly, the request is waived. However, even if this argument were properly raised as an objection, the objection would be overruled.

The court has reviewed Judge Carlson's report and recommendation and finds no clear error or manifest injustice on the face of the record. Indeed, Judge Carlson's analysis thoroughly considers and addresses the arguments raised by Plaintiffs in their objections. The fact that Plaintiffs disagree with the outcome of this analysis is not a basis to decline to adopt the report and recommendation.

Accordingly, **IT IS ORDERED THAT:**

- 1) The report and recommendation, Doc. 53, is **ADOPTED** in its entirety.
- 2) Plaintiffs' general objections, Doc. 56, are **OVERRULED**.
- 3) Plaintiffs' motion to certify class, Doc. 21, is **DENIED**.
- 4) This case is referred back to Magistrate Judge Martin C. Carlson for pretrial management.

s/Jennifer P. Wilson  
JENNIFER P. WILSON  
United States District Court Judge  
Middle District of Pennsylvania

Dated: March 24, 2023